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TAN CHOOI LIAN v. BADAN PENGURUSAN BERSAMA PLAZA PRIMA & ANOR

HIGH COURT MALAYA, SHAH ALAM
SHAHNAZ SULAIMAN J
[JUDIAL REVIEW NO: BA-25-6-02-2023]
10 JUNE 2024

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Abstract – *The Strata Management Tribunal is empowered, pursuant to reg. 25 of the Strata Management (Strata Management Tribunal) Regulations 2015, to either proceed with an award in the absence of either of the parties or adjourn the matter.*

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ADMINISTRATIVE LAW: *Judicial review – Application for – Challenge against decision of Strata Management Tribunal ('Tribunal') – Joint management body ('JMB') claimed against unit owner/applicant – Tribunal awarded in favour of JMB in absence of applicant – Applicant's setting aside application dismissed by Tribunal – Whether decision of Tribunal illegal, irrational unreasonable and disproportionate*

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LAND LAW: *Strata title – Strata management – Strata Management Tribunal ('Tribunal') – Joint management body ('JMB') claimed against unit owner/applicant – Tribunal awarded in favour of JMB in absence of applicant – Whether Tribunal empowered to proceed with award in absence of parties – Strata Management (Strata Management Tribunal) Regulations 2015, regs. 16 & 25*

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The first respondent, the joint management body ('JMB') of Plaza Prima, had claimed against the applicant, the owner of a unit at the said Plaza Prima, before the Strata Management Tribunal ('second respondent'). In the absence of the applicant, the second respondent made an award in favour of the first respondent and ordered the applicant to pay to the first respondent RM77,551.79 together with cost of RM200 ('2021 award'). The applicant, arguing that she had not received any notice for hearing prior to the delivery of the 2021 award, filed Form 16, to set aside the 2021 award ('setting aside application'). The setting aside application was dismissed by the second respondent and the 2021 award was maintained on the ground that the applicant had failed to attend the hearing. Hence, the present application for judicial review.

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Held (dismissing application):

(1) Based on reg. 25 of the Strata Management (Strata Management Tribunal) Regulations 2015 ('Regulations'), the second respondent was empowered to either proceed with an award in the absence of either of the parties or adjourn the matter; the second respondent chose the former and was acting well within its powers. The notice informing the

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new date of hearing was sent to the applicant at the said unit. In light of reg. 16 of the Regulations and the usage of the same postal address by the applicant in her statement of defence and counterclaim, her argument, that she had no knowledge of the hearing date prior to the 2021 award being delivered, could not be accepted. Moreover, it did not make sense for a person who had a suit against her to not enquire further and let the matter sat on its own. Notwithstanding that the applicant had made known to the second respondent that she had appointed her solicitors to act on her behalf, it did not alter the fact that, on record, she was still unrepresented and, therefore, there was no duty imposed by the Strata Management Act 2013 nor the Regulations that the solicitors for the applicant ought to be informed as well. (paras 30-31, 33 & 41)

Case(s) referred to:

Amanah Merchant Bank Bhd (Formerly Known As Amanahchase Merchant Bank Bhd) v. Lim Tow Choon (Through Official Assignee) [1994] 2 CLJ 1 SC ***(refd)***

Asia Pacific Education Holdings Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2023] 10 CLJ 549 HC ***(refd)***

Bank Kerjasama Rakyat Malaysia Bhd v. Lee Kam Yoong & Anor; Aseambankers (M) Bhd & Ors (Third Parties) [2012] 8 CLJ 823 HC ***(refd)***

R Rama Chandra v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC ***(refd)***

UDA Holdings Bhd & Anor v. Bumi Gajah Agencies Sdn Bhd [2010] CLJU 1509; [2010] 1 LNS 1509 HC ***(refd)***

UEM Land Bhd v. Yongnam Engineering Sdn Bhd [2020] CLJU 247; [2020] 1 LNS 247 HC ***(refd)***

Legislation referred to:

Strata Management Act 2013, ss. 110(2), 120, 121, 124, 144

Strata Management (Strata Management Tribunal) Regulations 2015, regs. 16(2), 25, 48

For the applicant - Shanmuga A Kanesalingam; M/s Kanesalingam & Co
For the respondent - Wong Siew Fan; M/s Tho, Hock & Chwan

Reported by Najib Tamby

JUDGMENT

Shahnaz Sulaiman J:

[1] This judicial review application is in respect of the decision given by the second respondent, the Strata Management Tribunal in allowing the first respondent's claim against the applicant.

Reliefs Sought

[2] The reliefs sought by the applicant in this application for judicial review are:

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1. Satu perintah bersifat *certiorari* bahawa keputusan responden kedua yang diberikan pada 10.11.2022 di Tribunal Pengurusan Strata Kes No. TPS/W-0117-1/2021 ("Prosiding Tribunal tersebut") dibatalkan;

2. Satu perintah bersifat *mandamus* diarahkan kepada responden kedua yang mengkehendaki responden kedua serta-merta;

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2.1 mengetepikan Award bertarikh 8.11.2021 yang dibuat di Prosiding Tribunal tersebut; dan

2.2 memilih panel Tribunal yang baru untuk menentukan tuntutan responden pertama dan pembelaan dan tuntutan balas pemohon selaras dengan undang-undang;

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3. pemohon dan responden pertama diberi kebebasan untuk diwakili oleh peguam di prosiding tribunal;

Factual Background

[3] The applicant is the owner of Unit No. 25-03-03 ("the unit") in Plaza
D Prima ("Plaza Prima"), located in Old Klang Road of the Federal Territory of Kuala Lumpur.

[4] On 8 November 2021, in the absence of the applicant, the second respondent made an award in favour of the first respondent being the joint management body of Plaza Prima. The award is that the applicant be ordered
E to pay to the first respondent a total amount of RM77,551.79 together with cost of RM200 ("the 2021 award").

[5] On 8 August 2022, the applicant through her solicitors, Messrs Kanesalingam & Co wrote to the second respondent and the first respondent
F stating that she did not have any knowledge of the 2021 award which had been made by the second respondent nor of any hearing date which had been held prior to the delivery of the 2021 award.

[6] Subsequently on 31 August 2022, the applicant filed Form 16 being an application for setting aside an award under reg. 48 of the Strata
G Management (Strata Management Tribunal) Regulations 2015 to set aside the 2021 award ("the setting aside application"). Through a "notice to objector" sealed by the second respondent, the setting aside application was filed on 15 September 2022, and fixed for hearing on 10 November 2022.

[7] The second respondent dismissed the setting aside application on
H 10 November 2022 and the 2021 award was maintained (dikekalkan) ("the impugned decision"). It was against this impugned decision the applicant filed this application for judicial review. Consequentially, the applicant further prayed that a *mandamus* be issued against the second respondent to set aside the 2021 award and for the second respondent to appoint a new
I panel to determine the first respondent's claim and the applicant's defence and counterclaim in accordance with law. The applicant further prayed that she and the first respondent to be given the liberty to be represented by solicitors in the proceeding before the second respondent.

Principles Relating To Judicial Review

[8] The principles surrounding the application for judicial review are trite. The court hearing application for judicial review are allowed to scrutinise not only the decision-making process but also for substance, as to whether they are tainted by illegality, irrationality or *Wednesbury* unreasonableness, procedural impropriety and also proportionality (refer the Federal Court case of *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147).

[9] Notwithstanding the foregoing approach, it has also been decided by the Federal Court case of *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629 that, only in the most appropriate of cases the *Rama Chandran* (*supra*) approach is applicable. Cases involving issue of public policy, national interest, public safety or national security are not amenable to the approach taken in *Rama Chandran* (*supra*).

Preliminary Objection

[10] At the onset of this application for judicial review, there was a preliminary objection raised by the counsel for the first respondent. The objection raised pertains to the affidavit in support of the application before this court ("lawyer's affidavit in support") which was averred by one Mr Kanesalingam a/l Ampalavanar who is a partner in Messrs Kanesalingam & Co, the solicitors representing the applicant in this application. According to the counsel for the first respondent, "the major part" of the lawyer's affidavit in support concerns the facts and not on issues of law, which, is "highly improper".

[11] According to counsel for the first respondent, the facts in issue which ought to be averred through the applicant include:

(i) the fact that the applicant was indeed oversea; and

(ii) certain documents like the sale and purchase agreement of the said unit, the cause papers and relevant correspondences of the previous claims initiated by the predecessor of the JMB, and documents related to the first respondent's claim or the applicant's defence and counterclaim before the tribunal.

[12] To support this contention, the applicant made reference to the case of *Bank Kerjasama Rakyat Malaysia Bhd v. Lee Kam Yoong & Anor; Aseambankers (M) Bhd & Ors (Third Parties)* [2012] 8 CLJ 823; [2012] 10 MLJ 73.

[13] The applicant's solicitors submitted that in an application for judicial review the court does not concern in "resolving a disputed question of fact". In support of this, the applicant's solicitors cited the case of *Asia Pacific Education Holdings Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2023]

10 CLJ 549; [2023] MLJU 1936. It was further submitted that the facts averred are not disputed, and the applicant has, through affidavit in support 2, affirmed on 5 April 2022 adopted the contents of the lawyer's affidavit in support (this was prior to leave being granted), and the first respondent has not been prejudiced by it.

[14] In this application for judicial review, the court is required to examine whether the impugned decision is liable to be quashed *via* an order of *certiorari* and to that end the concern is on the impugned decision itself or the decision-making process in coming out with the impugned decision by the tribunal, in light of *R Rama Chandra* (*supra*) above. In other words, the focus is on whether the second respondent in reaching the impugned decision fell into the error.

[15] Moreover, the applicant has, through affidavit in support 2, affirmed on 5 April 2022 adopted the contents of the lawyer's affidavit in support. The first respondent did not file any affidavit in reply to the said affidavit in support 2 or even challenge the veracity of its content.

[16] In this regard, this court respectfully cannot agree with the contention by learned counsel for the first respondent to allow this preliminary objection.

Analysis And Findings

[17] To consider this application for judicial review, it would be prudent to examine the relevant provisions. Section 120 of the Strata Management Act 2013 ("SMA 2013") stipulates that an award shall be final as reproduced below:

> 120 Decisions of Tribunal to be final
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> (1) An award made under subsection 112(3) or section 117 shall:
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> (a) subject to section 121, be final and binding on all parties to the proceedings; and
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> (b) be deemed to be an order of a court and be enforced accordingly by any party to the proceedings.
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> (2) ...

[18] The effect of an award under s. 120 of the SMA 2013 is subject to s. 121 of the SMA 2013. In this regard, s. 121 of the SMA 2013 provides:

> 121 Challenging the award on ground of serious irregularity
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> (1) A party to the proceedings of the Tribunal may, upon notice to the other party and to the Tribunal, apply to the High Court challenging an award in the proceedings on the ground of serious irregularity affecting the awards.
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> (2) ...

(3) For the purpose of this section, "serious irregularity" means an irregularity of one or more of the following kinds which the court considers has caused substantial injustice to the applicant:

(a) failure by the tribunal to comply with section 113;

(b) failure of the tribunal to deal with all the relevant issues that were put to it; or

(c) uncertainty or ambiguity as to the effect of the award.

[19] Founded on the foregoing provision, an award by the second respondent may be challenged if there is a serious irregularity and that serious irregularity must has caused substantial injustice to the applicant.

[20] In this application for judicial review, the decision which is being challenged is the decisions of the second respondent to dismiss the setting aside application by the applicant. The provision relating to setting aside an award of the second respondent by another panel of tribunal is not explicit in the SMA 2013. It was stated in the Strata Management (Strata Management Tribunal) Regulations 2015 ("Tribunal Regulations 2015"), which was made pursuant to s. 124 of the SMA 2013. Regulation 48 of the Tribunal Regulations 2015 reads:

48 Setting aside award

(1) Any award obtained where any one party does not appear at the hearing, or any award made pursuant to paragraph 23(a), may be set aside by the Tribunal on the application of the aggrieved party.

(2) The application under subregulation (1) shall be made in Form 16 in three copies and contain grounds, in detail, why the award should be set aside together with the prescribed fee and shall be made within thirty days after the award has been served on the aggrieved party.

(3) Form 16 shall be served by the aggrieved party on the other party, or if more than one party, to all the other parties.

[21] The word "may" in reg. 48 of the Tribunal Regulations 2015, in the view of this court, denotes that the setting aside of an award given by the tribunal is upon the discretion of the tribunal, which is determined by the grounds relied upon by the applicant.

[22] The applicant in the setting aside application, gave grounds for the application as may be summarised below:

(i) that the applicant is staying in Australia and no one in this country will attend to any letter delivered to her address in Malaysia;

(ii) that neither the applicant nor her counsel receive any notice for hearing by the second respondent after the hearing on 27 April 2021 was vacated; and

(iii) the applicant's solicitors did not receive any defence to the applicant's counter-claim despite having filed it on 5 May 2021.

[23] The facts of this application for judicial review are that the hearing for the setting aside application was fixed on 10 November 2022. Prior to the hearing date on 3 November 2022, the applicant's solicitors wrote to the second respondent, seeking confirmation as to whether the said solicitors could attend the hearing for setting aside application on behalf of the applicant. The applicant relied on Form 14 dated 18 March 2021 which is an application to be represented by an advocate and solicitor ("application to be represented"). The applicant's solicitors further stated that the applicant was not able to attend the said hearing on 10 November 2022 as she was still in Australia, and that the applicant's solicitors have instruction to attend the hearing.

[24] On 9 November 2022 at 12.48pm, the second respondent replied informing that they have never received the application to be represented by the applicant as it was sent to Bangunan Suruhanjaya Koperasi Malaysia, instead of Tribunal Perumahan dan Pengurusan Strata in Putrajaya. The second respondent further informed that no one can be represented by an advocate and solicitor, unless an application had been made to the president or the applicant attended personally at the hearing date fixed.

[25] The applicant's solicitors acknowledged that the application to be represented has been filed in Bangunan Suruhanjaya Koperasi Malaysia. It was put on record that the applicant's statement of defence had been filed on 5 May 2021 and the applicant's solicitors re-enclosed (melampirkan semula) the application to be represented. It is pertinent to note that the applicant's solicitors reply was sent at 4.49pm, which is more than four hours after the reply by the tribunal, and up to the time fixed for hearing of the setting aside application, there was nothing before this court to show that the applicant or her solicitors made effort to file the application to be represented formally in accordance with the manner stipulated by the Tribunal Regulations 2015.

[26] According to the notes of evidence, what transpired on the hearing date for the setting aside application is that the applicant did not attend. Instead, the applicant was represented by one Kee Hui Yee and Yu Gan. Both of the representatives were given the opportunity to speak, where as a matter of course, the solicitor asked for the solicitor's attendance be allowed and the applicant be given a new hearing date to submit on the setting aside application. At the risk of repetition, the setting aside application was eventually dismissed.

[27] The second respondent in coming to the impugned decision considered the following:

(i) that the filing of the application to be represented was not in accordance with the Tribunal Regulations 2015. It must be signed and sealed, and then served to the first respondent;

(ii) the application to be represented (dated 18 March 2021) was wrongly sent to Bangunan Suruhanjaya Koperasi, whilst the resending of it through email on 3 November 2022 was also not accompanied with filing fees;

(iii) the second respondent had through its email dated 9 November 2022 informed the applicant of the above issues;

(iv) the second respondent had also taken steps to examine whether the precondition to be represented by an advocate and solicitor under s. 110 of the SMA 2013 in that the matter involved complex question of law and have serious financial implication have been fulfilled, which the second respondent found that the elements were not fulfilled;

(v) the second respondent further considered the representations of the parties who attended, including the reason relied upon by the applicant (*ie*, that the first respondent and/or developer failed to maintain Plaza Prima, and therefore, the said unit cannot be rented out or run business) in failing to pay maintenance fees, and relied on *UDA Holdings Bhd & Anor v. Bumi Gajah Agencies Sdn Bhd* [2010] CLJU 1509; [2010] 1 LNS 1509 as well as *UEM Land Bhd v. Yongnam Engineering Sdn Bhd* [2020] CLJU 247; [2020] 1 LNS 247 and found that the failure to maintain could not be ground to not paying maintenance fees; and

(vi) the applicant did not attend the hearing for the setting aside application.

[28] The notes of evidence reveal that the statement of defence and counterclaim has been taken into consideration by the learned president, when he stated the reason relied upon by the applicant (*ie*, that the first respondent and/or developer failed to maintain Plaza Prima, and therefore the said unit cannot be rented out or run business) in failing to pay maintenance fees. This particular reason was part of the statement of defence and counterclaim filed by the applicant in 2021. Furthermore, this reason was not one of the grounds relied upon by the applicant in the setting aside application.

[29] The issue to be addressed by this court is, whether in arriving at the impugned decision, was there any issue of illegality, irrationality or *Wednesbury* unreasonableness, procedural impropriety and also proportionality, which caused substantial injustice to the applicant, such that an order for *certiorari* should be granted against the impugned decision.

[30] The main reason the setting aside application was dismissed is that the applicant had failed to attend the hearing. Pertaining to this, this court alluded to reg. 25 of the Tribunal Regulations 2015:

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25 Non-appearance of parties

(1) Where the claimant or respondent fails to appear on the date, at the time and place fixed for the hearing, the Tribunal may proceed with the hearing or adjourn the hearing to a later date or give an order or make an award as it thinks appropriate.

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(2) An award made as specified in subregulation (1) shall be:

(a) in Form 9 in the absence of the claimant; or

(b) in Form 10 in the absence of the respondent.

(3) Before disposing of the claim or counterclaim in the absence of any one or more parties, the Tribunal shall consider any representation submitted by the party or parties present.

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(4) Where neither party appears on the date, at the time and place fixed for the hearing, the claim may be struck out by the Tribunal.

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[31] Founded on the above regulation, it is clear to this court that the second respondent is empowered to either proceed with an award in the absence of either of the parties, or adjourn the matter. In the matter before this court, the second respondent chose the former. This court is of the considered view that the second respondent acted well within its powers.

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[32] The applicant relied on the main ground that she had not received any notice for hearing prior to the delivery of the 2021 award, especially the new date of hearing on 8 November 2021.

[33] The notice informing the new date of hearing was dated 18 October 2021 and was sent to the applicant at No. 39, Jalan Hujan Bubuk 2, Taman

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OUG, 58200 Kuala Lumpur, which is the said unit. As early as the demand notice dated 17 December 2020 until the service of the first respondent's statement of claim and notice of hearing, the address of the applicant had been the same.

[34] Reference could also be made to the statement of defence and

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counterclaim filed by the applicant on 5 May 2021, where the applicant's address was stated as "No. 39, Jalan Hujan Bubuk 2, Taman OUG, 58200, Kuala Lumpur".

[35] In this regard, this court referred to reg. 15 of the Tribunal Regulations 2015 which reads:

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15 Address of service

Every document which is served to the Tribunal shall state the name and address of the party serving the document and that address shall be deemed to be the address of service of the party.

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[36] The applicant in her statement of defence and counterclaim used the exact same address as the notice of hearing. It is further observed that the applicant had, yet to obtain any approval under s. 110 of the SMA 2013 to be represented by her solicitors.

[37] Moreover, pertaining to the manner of service, reg. 16 of the Tribunal Regulations 2015 provides as follows:

16 Manner of service

(1) Any document required to be served on any person under these Regulations may be served and **shall be deemed to have been served** on that person by serving a copy of such document:

(a) personally;

(b) by registered post addressed to the last-known address of business, registered office, parcel or residence of the person to be served; or

(c) by attaching the document at a prominent part of the last-known address of business, registered office, parcel or residence of the person to be served.

(2) ... (emphasis added)

[38] A similar provision could also be found in s. 144 of the SMA 2013:

144 Service of notice or order

Any notice or order required to be served on any person under this Act may be served and shall be deemed to have been served on that person by serving a copy of such notice or order:

(a) personally;

(b) by registered post addressed to the last-known address of business, parcel or residence of the person to be served; or

(c) by attaching the notice or order at a prominent part of the last-known address of business, parcel or residence of the person to be served

[39] In the Supreme Court case of *Amanah Merchant Bank Bhd (Formerly Known As Amanahchase Merchant Bank Bhd) v. Lim Tow Choon (Through Official Assignee)* [1994] 2 CLJ 1, the effect of the word "deemed" could be found as follows:

In *Amanah Merchant Bank Bhd v Lim Tow Choon* [1994] 2 CLJ 1 (foll) [1994] 2 CLJ 1, the Supreme Court considered a clause in a guarantee providing for the service of notices but not of an originating process. The notice in that case was a notice of demand which was necessary to found a cause of action against the guarantor. The clause was similar in nature to para. 23 in this case and contained a "shall be deemed to be served" provision. The Supreme Court held, at p. 5, that the words "shall be deemed" in the clause before them meant "shall be regarded as", meaning that the deeming was not meant to be a presumption and **was therefore not something that was rebuttable.** (emphasis added)

[40] In light of reg. 16 of the Tribunal Regulations 2015, and the usage of the same postal address by the applicant in her statement of defence and counterclaim, this court cannot accept the applicant's argument that she had no knowledge of the hearing date prior to the 2021 award being delivered. Moreover, it does not make sense for a person who has a suit against him to not enquire further and let the matter sat on its own. From the contemporaneous evidence adduced on behalf of the applicant, there was no attempt made by the applicant or her solicitor to enquire on the next date.

[41] Notwithstanding that the applicant have made known to the second respondent that she had appointed her solicitors to act on her behalf, it did not alter the fact that on record she was still unrepresented and therefore there is no duty imposed by the Act nor the regulations that the solicitors for the applicant ought to be informed as well.

[42] Furthermore, sub-reg. 16(2) of the Tribunal Regulations 2015 provides for notification by way of email. However, upon perusal of the exhibits available before this court, there is nothing to demonstrate that the solicitors for the applicant had informed any of the parties of the applicant's email address.

[43] The applicant acknowledges that in order to be represented by an advocate and solicitor, the applicant ought to make application under s. 110 of the SMA 2013. The applicant seems to be aware of the criteria to be fulfilled in order to justify being represented by an advocate and solicitor.

[44] The issue now is, did the applicant made any formal application at all? The answer is a simple no. Based on the application to be represented (Form 14), Form 14 was devoid of any seal and date by the tribunal. This signifies that it has never been filed.

[45] It is unfathomable how the applicant could think that the Form 14 which has purportedly been filed in 2021 before the 2021 award being made, could still be used in the setting aside application. The applicant, in the view of this court, seem to be taking a cavalier attitude, by firstly sending Form 14 to the wrong address when the defence and counterclaim was sent to the correct address. Moreover, the applicant did not enquire about it until 3 November 2022 which was just a few days before the hearing date on 10 November 2022, by way of email. Upon being informed that the filing of Form 14 was irregular, the applicant proceeded to send Form 14 by way of email without any payment.

[46] On the date of hearing itself, the notes of evidence did not reveal that any filing or payment was attempted to be made by the applicant or the applicant's representative appearing at the hearing.

[47] The applicant contended that she should be given an opportunity to regularise the filing of the application to be represented, and should not be shut off the door by merely failing to pay the prescribed fee. Furthermore, the applicant had ample time from 15 September 2022 until 10 November 2022 to make the application to be represented. No reason whatsoever was given by the applicant for her inaction.

[48] The applicant in her statement raised two grounds:

(i) that since failure to comply with s. 117 of the SMA 2013 will result in criminal offences, a right to be represented ought to be granted; and

(ii) that upon the purposive construction of the SMA 2013, one cannot charge fee for a person to be represented.

[49] At the risk of repetition, the Tribunal Regulations 2015 was enacted pursuant to s. 124 of the SMA 2013, where the Minister pursuant to para. 124(2)(e) was empowered to make regulations prescribing and imposing fees and providing for the manner for collecting and disbursing such fees.

[50] This court is reminded of para. 124(2)(e) of the SMA 2013, together with sub-s. 110(2) which reads:

> (2) No party shall be represented by an advocate and solicitor at a hearing unless, in the opinion of the Tribunal, the matter in question involves complex issues of law and one party will suffer severe financial hardship if he is not represented by an advocate and solicitor.

[51] Notwithstanding that a fee has been imposed, it is still up to the second respondent to decide whether a person ought to be represented by advocate and solicitor.

[52] The applicant in her submissions argued that s. 110 does not have the words "prescribed fee" as in s. 108 and therefore, applying the maxim *specialibus derogant generalibus*, imposing fees for an application to be represented by an advocate is *ultra vires* the SMA 2013. In this regard, the Tribunal Regulations 2015 ought to be read as a whole, there is not any specific regulation pertaining an application to be represented. Rather, as acknowledged by the applicant as well, the application is an "interlocutory application" in Form 14 of the Second Schedule of Tribunal Regulations 2015.

[53] On the issue of criminal offence, this court is of the view that a criminal offence is preceded by a charge being framed against the perpetrator. A tribunal hearing and its award does not put the applicant under criminal charges. It is only upon non-compliance of the award, and the applicant being charged, only then the right to be represented as guaranteed under the Federal Constitution applies.

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Conclusion

[54] For the aforementioned reasons, this court is of the considered view there is no illegality, irrationality, *Wednesbury*'s unreasonableness or proportionality, to enable this court to grant an order of *certiorari*. This court therefore dismisses this application for judicial review with costs of RM5,000 to be paid to the first respondent, subject to allocatur.

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